Manitoba Farm Mediation Report

Annual Report 2004 - 2005

Manitoba

106-00342/

Minister of Agriculture, Food and Rural Initiatives

Room 165
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

To His Honour
John Harvard
Lieutenant Governor for
the Province of Manitoba

Your Honour:

I have the honour to submit herewith the Report of the Manitoba Farm Mediation Board for the period April 1, 2004 to March 31, 2005.

Yours truly,

Rosann Wowchuk
Minister

Manitoba

Agriculture, Food and Rural Initiatives

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Honourable Rosann Wowchuk
Minister
Manitoba Agriculture, Food and Rural Initiatives
Room 165 Legislative Building, 405 Broadway
Winnipeg MB R3C OV8

Dear Minister Wowchuk:

In accordance with the provisions of *The Family Farm Protection Act*, I have the honour to forward to you The Annual Report of the Manitoba Farm Mediation Board for the fiscal year ending March 31, 2005.

Respectfully submitted,

Kenneth Caldwell
Chairperson
Manitoba Farm Mediation Board

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BOARD MEMBERSHIP

(as at March 31, 2005)

Name		Address
Kenneth Caldwell	Chair	Rossburn
Gaylene Dutchyshen	Vice-Chair	Gilbert Plains
Gerry Friesen	Member	Wawanesa
Bragi Simundsson	Member	Arborg
Fred Embryk	Member	Grandview
Carol Masse	Member	Fannystelle
Louis Balcaen	Member	La Broquerie
Harold Thorkelson	Member	Arnes

OBJECTIVES

The Manitoba Farm Mediation Board (the Board) administers *The Family Farm Protection Act* (the Act), the objective of which is to aid farmers in protecting and sustaining their agricultural operations through difficult economic times. The Act was assented to by the Manitoba Legislative Assembly on September 10, 1986.

Under Part 3 of the Act, creditors are required to ask the court for leave before beginning legal action that would result in a farmer losing ownership or possession of farm land. This affects mortgages, liens, judgements, and agreements for sale. The Act allows the Board ninety (90) days to mediate a settlement and provide a report to the court prior to ruling on the leave.

Part 6 of the Act provides for voluntary mediation by the Board through a peer advisory committee. There is no requirement for either party to become involved, and it is not restricted to dealing with loans on farm land.

The Act is a basis for facilitating improved communication between creditors and farm debtors, ensuring that individual farmers receive fair and consistent treatment. Through mediation, alternatives are explored to develop viable financial proposals to the mutual benefit of all concerned.

GENERAL COMMENTS

Applications for mediation decreased slightly in 2004/05 compared to the previous year (124 vs. 127) and were below the previous five year average of 133 applications. Applications for foreclosure decreased from 36 in 2004/05 to 34 this past year. There were fewer applications from the southwest region of the province compared to last year and a corresponding increased percentage of applications from the central region of the province. The percentage of applications from farms where the major source of income was off farm income decreased, however, the percentage of applications from livestock farms (beef in particular) farms increased.

Net cash income for 2004 in Manitoba is estimated to be approximately 125% of the previous year. Increased direct program payments accounted for a significant portion of the increase in net cash income.

In addition to the challenges facing the ruminant sector (cattle, sheep, goats, bison, elk and llamas) resulting from the loss of export markets on account of the three cases in Canada of Bovine Spongiform Encephalopathy (BSE), farmers faced challenges in other commodities. Reduced demand resulted in contract cut backs for potato and PMU producers.

Creditors are well aware of the situation farmers are in and where possible provide short term assistance by employing measures such as deferred payments, refinancing, etc. For the long term however, creditors, the Manitoba Farm Mediation Board (MFMB) and Manitoba Agriculture, Food and Rural Initiatives (MAFRI) are searching for viable, sustainable economic development options for farmers.

The MFMB continues to work together with MAFRI, producers and producer groups, private industry, creditors, researchers and the federal government to identify viable opportunities for diversification that will assist Board clients.

ACTIVITY

The MFMB conducts the program delivery activities of *The Family Farm Protection Act*. The Board assists farmers in improving and sustaining their farming operations under difficult economic conditions through mediation with their creditors, financial counseling and loan payment guarantees. The Board reviews individual cases, provides management recommendations, and tries to mediate arrangements that leave farmers with a viable plan.

Loan, lease and security guarantees are provided when necessary to assist with mediated settlements. The provision and annual renewal of a guarantee is based on a viable financial plan, and an agreement from the farmers to meet performance conditions including budgeting, record keeping, risk management and proactive financial planning. The Board annually reviews the farm's progress in efforts to ensure the farm remains viable and that the performance conditions are met.

In 2005/06 the Manitoba Farm Mediation Board plans to continue to:

- provide mediation services on Applications for Leave to Foreclose and on applications for a Peer Advisory Review,
- consider new guarantees of loan and lease payments and/or security, in order to facilitate completion of mediated settlements,
- review and consult on the financial progress of farmers that have existing guarantees, and to consider renewals of existing guarantees, and
- conduct regular meetings to consider the provision of guarantees and to improve upon the effectiveness and efficiency of the mediation process.

OPERATIONS

APPLICATIONS

Part 3: Applications For Leave

One of the Board's functions is to become involved in foreclosure proceedings. Under Part 3 of the Act, a lender who intends to foreclose on farmland must make application to the Court of Queen's Bench to obtain Leave to Foreclose. Copies of the application must be served upon the farmer and the Manitoba Farm Mediation Board within 30 days. The Board then has up to 90 days to analyze the case, conduct mediation with the farmer and lender in the pursuit of achieving an alternative to foreclosure, and to prepare a report for the Court.

Part 6: Peer Advisory Panels

Under Part 6 of the Act, a farmer or a creditor may apply to the Board to have a Peer Advisory Panel review the financial arrangements between the farmer and any or all of the creditors of the farmer. The purpose is to derive a suitable financial plan or to arrange for payment to the creditors, without mediation having to be initiated by legal proceedings.

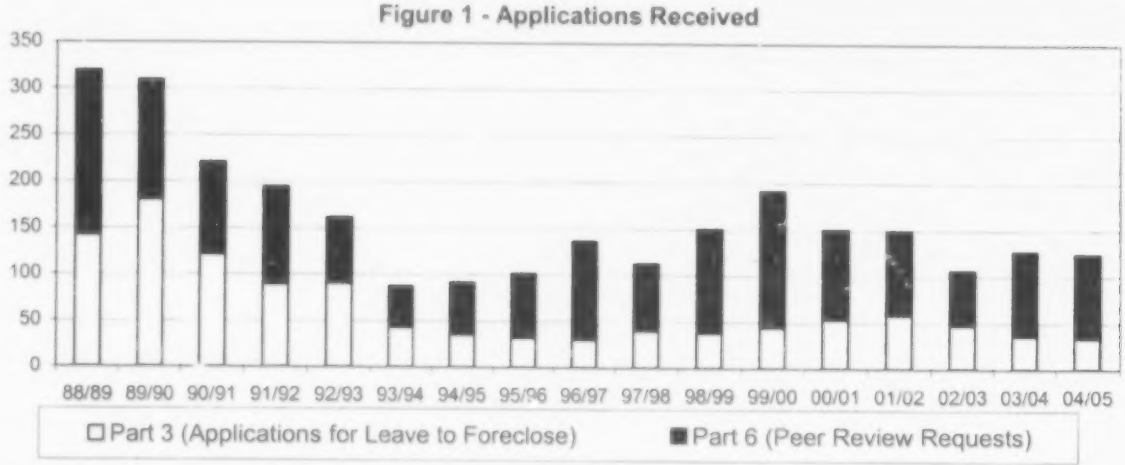
In 2004/05, the Board received 124 applications, representing 116 different farms. Since its inception, the Board has received 3,057 applications representing approximately 2,173 farms.

The number of applications slightly decreased in 2004/05 from the 127 applications received in 2003/04 (see Table 1 and Figure 1). The number of both Part 6 and Part 3 applications declined.

TABLE 1 – Applications Received

	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003	2003/ 2004	2004/ 2005
Part 3	40	38	44	53	58	47	36	34
Part 6	72	112	147	97	91	59	91	90
Total	112	150	191	150	149	106	127	124

Figure 1 - Applications Received



The Board keeps track of the agricultural region each farm involved is based in. There are four regions defined by Manitoba Agriculture, Food and Rural Initiatives. In 2004/05 there were more applications than usual from the Central region, and fewer than usual from the Southwest region, compared to the long-term average (see Table 2).

TABLE 2 – Location of Farms Involved in Mediation

Agricultural Region	04/05		Total, 87/88 - 04/05	
	No.	% of Total	No.	% of Total
Central	30	25.9%	476	21.9%
Eastern/Interlake	27	23.3%	536	24.7%
Northwest	26	22.4%	483	22.2%
Southwest	33	28.4%	678	31.2%
Total	116		2,173	

When the information is available, the Board records the type of farm involved in mediation based on the largest source of gross income at the time the case is opened. There was a drop in the number of farms becoming involved with the Board that rely on off farm income for the majority of their gross income. There was an increase in the

rate of applications from all livestock, especially beef cattle, as well as farms that obtain the majority of their income from grains and oilseeds.(see Table 3).

TABLE 3 - Type of Farms Involved in Mediation

Largest Source of Gross Income	04/05		Total, 98/99 – 04/05	
Beef Cows	27	30%	162	23%
Feeder Cattle	4	5%	20	3%
Hogs	12	13%	83	12%
Other Livestock	8	9%	41	6%
	51	57%	306	44%
Grain/Oilseeds	19	21%	253	35%
Forage	3	3%	14	2%
Other Crop	2	2%	14	2%
	24	26%	281	39%
Off Farm	14	16%	124	17%
Custom Work	1	1%	4	0%
	15	17%	128	17%
Total	90	100%	715	100%
Unknown/Not Recorded	26		206	
Grand Total	116		921	

MEDIATION RESULTS

The Board measures the effectiveness of mediation by recording the results at the conclusion of each case. The case is closed when a settlement is achieved or when the panel chair determines that a settlement is not possible at that time. All applications received while a case is open are considered part of the same case, so a single case may have more than one application.

The mediation process in 2004/05 resulted in settlement of approximately 75% of cases (see Tables 4 and 5). This is consistent with the settlement rate in previous years.

TABLE 4 – Case Activity

	2001/02	2002/03	2003/04	2004/05
Carryover from previous year	72	58	47	56
New cases opened	138	99	121	116
Total for Mediation	210	157	168	172
Cases Completed	152	110	112	84*
Mediation in Progress	58	47	56	88

*Heavy financial pressures facing several industries resulting from BSE, PMU and potato contract reductions and low commodity price outlook for a number of major crops increased the degree of difficulty in resolving cases. As such, more time was required on many cases, however it is anticipated that a high number of cases will be resolved in the new fiscal year.

TABLE 5 – Settlements Achieved

	2001/02	2002/03	2003/04	2004/05
Cases Completed	152	110	112	84
Mediation not required*	48	35	38	37
Mediated	104	75	74	47
Settlements achieved	73	52	54	35
	(70%)	(69%)	(73%)	(75%)

* includes withdrawn and deferred applications.

AGREEMENT REGISTRY

The Act requires the Board to maintain a registry for agreements made between farmers and their creditors without the participation of the Board. Agreements reached by the Board are kept on file and are not entered in the Agreement Registry. There have been 25 agreements registered since inception of the program. There were no new agreements registered in the Agreement Registry in 2004/05.

GUARANTEES (SPECIAL FARM ASSISTANCE FUND)

The Special Farm Assistance Fund, delivered through five programs, is designed to enable a farmer to obtain the necessary financing or lease to complete a debt settlement and continue farming. It provides a safety net to farmers who can demonstrate viability but may still be vulnerable to negative financial changes in the short term after debt settlement. These programs are provided on a guarantee basis and cover future shortfalls for up to four years.

Before a guarantee is provided, the Board attempts to ensure all factors are considered in devising a viable plan. Once a guarantee is in place, the Board annually reviews the farmer's progress, recommending adjustments when necessary and discusses major financial transactions with the farmer before these transactions are made. The annual

reviews include a detailed financial analysis and assistance to the farmer to develop and maintain a financial management record system.

Repayment is only required if a farmer sells his farmland within 5 years of assistance being provided and is limited to the amount of equity in the land. This is secured by placing a caveat on the farmer's land.

The five programs are:

		Maximum Guarantee
Program 1	Guarantee of Loan Payment	$10,000 per year
Program 2	Guarantee of Lease Payments	$10,000 per year
Program 3	Guarantee of Security Value	$40,000
Program 1:3	Combination of Programs 1 & 3	$40,000
Program 4	Emergency operating assistance	$10,000

During the 2004/05 fiscal year, the Manitoba Farm Mediation Board approved guarantees for 8 farm clients for a total of $188,380 (see Table 6).

TABLE 6 - Guarantees Approved in 2004/05

Year Payment Due	Program 1	Program 2	Program 1:3	Program 3	Program 4	Total
2004/05		$0	$0	$0	$15,000	$15,000
2005/06	$33,345	$0	$0	$0	$0	$33,345
2006/07	$33,345	$0	$0	$40,000	$0	$73,345
2007/08	$23,345	$0	$0	$0	$0	$23,345
2008/09	$23,345					$23,345
2009/10				$20,000		$20,000
TOTAL	**$113,380**	**$0**	**$0**	**$60,000**	**$15,000**	**$188,380**
# of Farms	4	---	---	2	2	8

Annual Review of Guarantees

In 2004/05, 26 farms with a total of 26 guarantees were reviewed as required by the program guarantee guidelines. Of these, 15 farms were able to meet their obligations without calling on the guarantee. The Board made partial or full payment on the guarantees for the other 11 farms during the year for a total of $92,616. As a percentage of the outstanding liability, payments were higher than in 2003/04, and higher than average (see Figure 2 and Table 7). The percentage has been rising due to a lower use of Program 3 guarantees, which have a lower risk of claims, and an increase in the use of Program 1 and Program 4 support.

The Board did not receive any funds from the producers under the repayment terms of the guarantees in 2004/05.

FIGURE 2 - Guarantee Liability/Payments Made

TABLE 7 - Guarantee Liability vs. Payments Made

Year	Guarantee Liability	Payments Made*	% Paid
2004/05	$446,111	$92,616	20.8%
2003/04	$637,862	$113,093	17.7%
2002/03	$546,247	$55,639	10.2%
2001/02	$634,431	$95,019	15.0%
2000/01	$726,954	$72,509	10.0%
1999/00	$577,859	$58,481	10.1%
1998/99	$686,182	$56,069	8.2%
1997/98	$1,134,274	$58,271	5.1%
1996/97	$1,657,006	$101,700	6.1%
1995/96	$2,020,137	$107,989	5.3%
1994/95	$2,741,245	$106,291	3.9%
1993/94	$3,354,264	$205,457	6.1%

* Total payouts. Since 1987, the Board has also been repaid a total of $153,637 under provisions of the guarantee agreements.

OPERATING EXPENSES

The Manitoba Farm Mediation Board's operating budget is, for the most part, used to cover the costs of mediation on applications and administration of the guarantee programs.

FIGURE 3 Administrative Expenses